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LECTURE

SECOND ANNUAL GOLDEN GATE
UNIVERSITY SCHOOL OF LAW
CHIEF JUSTICE RONALD M. GEORGE
DISTINGUISHED LECTURE

WOMEN CHIEF JUSTICES

WELCOME

DRUCILLA STENDER RAMEY
DEAN, GOLDEN GATE UNIVERSITY SCHOOL OF LAW

DAN ANGEL
PRESIDENT, GOLDEN GATE UNIVERSITY

CHIEF JUSTICE RONALD M. GEORGE
SUPREME COURT OF CALIFORNIA

LECTURE INTRODUCTION

JUSTICE MORGAN CHRISTEN
Alaska Supreme Court

LECTURE

JUSTICE DANA FABE
FORMER CHIEF JUSTICE, ALASKA SUPREME COURT
PRESIDENT, NATIONAL ASSOCIATION OF WOMEN JUDGES

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PANEL INTRODUCTION

DRUCILLA STENDER RAMEY

DEAN, GOLDEN GATE UNIVERSITY SCHOOL OF LAW

MODERATOR

JUSTICE JOAN DEMPSEY KLEIN

SENIOR PRESIDING JUSTICE, CALIFORNIA COURT OF APPEAL

PANELISTS

CHIEF JUSTICE CHRISTINE DURHAM

UTAH SUPREME COURT

PRESIDENT, NATIONAL CONFERENCE OF CHIEF JUSTICES

JUSTICE DANA FABE

FORMER CHIEF JUSTICE, ALASKA SUPREME COURT

JUSTICE JANICE HOLDER

FORMER CHIEF JUSTICE, TENNESSEE SUPREME COURT

CHIEF JUSTICE BARBARA MADSEN

WASHINGTON SUPREME COURT

JUSTICE LEAH WARD SEARS

PARTNER, SCHIFF HARDIN LLP

FORMER CHIEF JUSTICE, GEORGIA SUPREME COURT

WELCOME

DEAN RAMEY: Good evening, ladies and gentlemen. My name is Drucilla Stender Ramey and as Dean of Golden Gate University School of Law, it is my very great pleasure to welcome all of you to this Second Annual Ronald M. George Distinguished Lecture.¹

Let me first extend a special welcome to our transcendent leader, Chief Justice Ronald M. George, as well as to this year's distinguished speaker: the President of the National Association of Women Judges (NAWJ), Alaska Supreme Court Chief Justice Dana Fabe. She will be

¹ This lecture and panel discussion were presented on October 12, 2010, at the PG&E Auditorium in San Francisco, California.

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introduced by her colleague and our own distinguished alumna, Justice Morgan Christen, in the fullness of time.

We also welcome today our extraordinary panel of women Supreme Court Chief Justices and immediate past Chief Justices, which will be moderated by the occasionally immoderate but always immeasurably and irresistibly wise Justice Joan Dempsey Klein, the Senior Presiding Justice of the California Court of Appeal.

They are joined by a magnificent group of our alumni, our Board of Trustees, distinguished jurists, sponsor firm and corporation co-chairs, other leaders of the legal profession and the judiciary, our own wonderful faculty and administration, and most of all, our outstanding students. Here at the outset, I would like to thank Golden Gate University's own Lisa Lomba and Mateo Jenkins, without whom absolutely none of this would have been possible.

We are also deeply honored to have in attendance Bill Vickrey, the Administrative Director of the Courts, and representatives of the leadership of NAWJ, including our own astounding Ninth Circuit immediate past Chief Judge Mary Schroeder (the reason we still *have* a Ninth Circuit as we know it), NAWJ President-elect Marjorie Carter and Presiding Judge-elect of the Los Angeles County Superior Court, Lee Edmon. I would like to note that the NAWJ meeting commences tomorrow, and we timed it that way so that we could have NAWJ leadership here.²

Lastly, but certainly not least, I would like to thank our most generous sponsors and our amazing co-chairs who represent the elect of the elite of the female leadership of our legal community – and a few good men as well – all listed in your program.

Now, it is my honor to introduce to you, in addition to the President of our Board of Trustees, Les Schmidt, and President-elect, Dana Waldman, for a brief welcome, on behalf of the entire university, our distinguished President and huge supporter of this law school, Dan Angel.

PRESIDENT ANGEL: Good afternoon. What a distinct pleasure to be here today for the second part of our Distinguished Lecture series. Having the Chief Justice here himself last year to kick this off was a wonderful beginning. And to think that this year we are surrounded by Chief Justices, so how good can it get? We are looking forward to

² Press Release, NAWJ, NAWJ Announces its 32nd Annual Conference 'San Francisco, Open Your Golden Gate!' Focusing on Children, Family and the Elderly, October 13-17, 2010 (Sept. 12, 2010), available at <http://www.cccba.org/flyer/NAWJ.pdf>.

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finding out. You probably wonder why we are meeting in this venue and I want to tell you that there is an ulterior plot. The goal is by PG&E to harness the energy from all of these Chief Justices and to solve our energy problems. We have a great afternoon planned for you: a lecture and discussion, which I think that you will find terribly enlightening and most enjoyable. It is my pleasure to simply be here and welcome you all, and to tell you how thrilled we are to have you here as our guests. Thank you so much.

DEAN RAMEY: Thank you, President Angel. It is now my great honor to briefly introduce to you all the very model of the man who needs no introduction, Chief Justice Ronald M. George, who so graciously lent his moniker and enormous stature to Golden Gate Law's effort to bring to the university, and to our community, jurists who are among the leading judicial thinkers and innovators of our day, and to shine a spotlight on the transcendent importance of the work of our state's courts.

Since 1996, Chief Justice George has served as the twenty-seventh Chief Justice of California.³ Now, as he leaves the court on January 2nd, 2011, at midnight, after thirty-eight extraordinary years on the bench, he confers on all of us his legacy: the largest and most advanced, diverse, fair and accessible justice system in the world. Named by former Attorney General Bill Lockyer as "the best Chief Justice in California history,"⁴ Chief Justice George has stood as a momentous force for good in this state and nation. A true renaissance man whose idea of relaxation is mountain climbing, marathoning, and this winter for the second time going with his intrepid and beautiful wife, Barbara, to Antarctica. He is a devoted husband, father and grandparent. A "glitterati" who is also a literati, Chief Justice George is that rare but most felicitous of combinations: a nonpareil administrative leader and a courageous judge, dedicated to making our state system of justice accessible to all, and rigorously attentive to the rights of those who have been historically relegated to the margins of society.

Chief Justice George, while we welcome with great anticipation our new Chief Tani Cantil-Sakauye,⁵ you will be sorely, sorely missed. But

³ See Maura Dolan, *California Chief Justice Ronald George Leaves Historic Legacy*, L.A. TIMES, Dec. 30, 2010, at A1, available at <http://articles.latimes.com/print/2010/dec/30/local/la-me-george-legacy-20101230>.

⁴ *Id.*

⁵ Press Release, Office of the Governor, Gov. Schwarzenegger Swears-In His Nominee, Justice Tani Cantil-Sakauye, as California's Next Chief Justice (Dec. 3, 2010), available at <http://www.gov38.ca.gov/index.php?/print-version/press-release/16646/>.

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fortunately for us, we have an award with your name on it. So with any luck, we will be able to lure you back here more often than not for this august event for many years to come. Please approach the podium for a token of our tremendous gratitude, suitable on a shelf or as a doorstep. We look forward to our continuing partnership.

CHIEF JUSTICE GEORGE: Thank you so much. I am going to add another brief welcome before we get on to heart of the program here. It was a great honor a year ago to be asked to deliver this lecture tonight and then, of all things, to have the lecture series named after me. I could not be more delighted or impressed than with the selection of the next person to deliver this lecture now named after me, Chief Justice Dana Fabe. This woman with whom I worked as a member of the Conference of Chief Justices is an extraordinary leader, who has even hosted the other Chiefs up in her home state of Alaska. And then to see an accompanying panel entitled “Women Chief Justices” as part of the same program.

Let me just go down memory lane a little bit – I won’t keep you long on this. I cannot help but reflect upon the fact that when I went to law school, there were four women in my class, and that was all. Although that was a number sufficient to garner the first place in the class to a woman, we now have more than a majority of women at our law school. Also, about one third of the Chief Justices of the various states and territories are women. We will have, upon my successor Justice Tani Cantil-Sakauye taking office, a majority of women on the California Supreme Court. This would have been unthinkable several years ago. At that time (and I will speak generically of the panelists because they will receive a more complete introduction from their moderator), to have that many women engaged in the national administration of justice was something unthinkable, certainly to my long-time friend, Justice Joan Dempsey Klein, the Senior Presiding Justice of the Court of Appeal, when she was co-founder – “Founding Mother” is the term that has been used – of the National Association of Women Judges and the California Women Lawyers.

It is incredible progress that has been made, and each of the panelists is a person with whom I have been privileged to work as a member of the Conference of Chief Justices. Each one has done not only an outstanding job in her state, but also in terms of the contributions that were made to the Conference of Chief Justices in the National Center for State Courts on a national level. That is something that we can be very, very pleased with, and I am thrilled with my successor, whom some of you involved in programs later this week with the National Association

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of Women Judges will have the pleasure of meeting and hearing.

I will conclude this brief welcome by saying that during my thirty-eight years on the bench, which will come to a close on January 2nd, I have tried to commit myself and the California judiciary to access to justice, to independence of the judicial branch and to the rule of law. I know that each of your following speakers – our guest lecturer, the panel members and their moderator – is equally dedicated to those concepts. I congratulate them, I very much look forward to the lecture that is to follow and I wish you all a wonderful program, which is guaranteed with these outstanding panelists. Thank you so much.

DEAN RAMEY: Thank you, Chief Justice George. It is now my great pleasure to introduce the woman who will tell you a little bit about our 2010 Distinguished Lecturer. I first met Alaska Supreme Court Justice Morgan Christen when she was my brilliant student back some little time ago. Talk about the student who made good. Appointed to the Alaska Supreme Court on March 4, 2009, Justice Christen attended college in England, Switzerland and the People's Republic of China, earning a B.A. from the University of Washington in International Studies, and a J.D. from Golden Gate. After clerking and practicing law for fifteen years at what is now K&L Gates, she was appointed to the Alaska Superior Court in 2001, ultimately serving as its presiding judge of the Third Judicial District from 2005 to 2009, at which point she assumed her current distinguished position on the Supreme Court. Among her many, many honors, which I will not go into, was a 2004 recognition of both her and her husband as philanthropists of the year. It really doesn't get any better than that, even for a Supreme Court Justice, so I bring you Morgan Christen.

LECTURE INTRODUCTION

JUSTICE CHRISTEN: Thank you. That was a nice welcome. I want to say that it is really wonderful to be back, and it is so great to see Dru Ramey back at Golden Gate.

When I left Golden Gate, I went off to Alaska for a six-month internship, and then for what I thought would be a yearlong clerkship. As so many others have done, I fell in love with the state and it has become my home.

Autumn is a particularly gorgeous time of year in Alaska. I do not know how many of you have visited or really seen our state, but just north of where Dana and I live the landscape becomes a tundra. In the summer it is green, but now we have had our first frost and the tundra

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has turned a thousand different colors. And the longer you look, the richer the tapestry becomes – golds and greens to be sure, but just about every shade of blue, and maroon, and purple, if you take time to really look.

The colors of the tundra are just one of Alaska's many surprises. Another that is most fitting to mention for this evening's lecture is our very diverse and colorful community. It is not what people from the lower forty-eight think – and we do call you the people from the lower forty-eight. A statistic that makes my point is that in the Anchorage School District alone over ninety different languages are spoken.⁶

Alaska's diverse population is just one of the reasons that my colleague, Justice Dana Fabe, is the perfect person to speak to you tonight about diversity, especially diversity on the bench. Dana is a person who has taken time to give many lawyers and aspiring judges much needed words of encouragement. I know about this from personal experience. She has taken time to encourage young Alaskans, including Alaskan Native youth, helping them with college applications, listening, nudging, and participating in programs that bring courts to the schools and schools to the courts. She has been a wonderful mentor to many people. Dana is here tonight to share some observations about the importance of diversity in the judiciary. It is a subject very close to my heart and I am as anxious as you are to hear what she has to say, so allow me to introduce her to you.

After receiving her undergraduate degree from Cornell University and her J.D. from Northeastern University, Dana went to Alaska, as I did, to clerk. After her clerkship, Dana went to work for the Alaska Public Defender Agency, and then she took over and became head of that agency. This is a pattern you will see if you read her resume. Dana was appointed to the Superior Court Bench in 1988 and then she became the Deputy Presiding Judge. In 1996, she was appointed to the Alaska Supreme Court. When school children come to our court, I tell them that they can touch history if they touch Dana because Justice Fabe was the first woman on our State Supreme Court, and the first woman to serve as Chief Justice.⁷

⁶ Memorandum from the Office of the Superintendent of the Anchorage Sch. Dist. to the Sch. Bd. 9 (Jan. 19, 2011), *available at* http://www.asdk12.org/School_Board/archives/2010-2011/20110119/B01M222.pdf (stating that "[o]ver 90 languages, other than English, are spoken in the Anchorage schools").

⁷ See Press Release, Alaska Court System, Alaska's Justice Dana Fabe to Keynote Distinguished Lecture in California: "Women Chief Justices: Great Power, Great Responsibility, and Some Unique Challenges (Oct. 8, 2010), *available at* <http://www.courts.alaska.gov/media/dana-fabe-GGU-lecture.pdf>.

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The promotion of diversity in our Bar and on the bench has been a passion of Justice Fabe's for many years. She chairs our court's Fairness, Diversity and Equality Committee, and she has co-chaired the Alaska Bar Association's Gender Equality Section. In her spare time, in case I didn't mention it, she is the current President of the National Association of Women Judges. Please welcome my friend and my colleague, Justice Dana Fabe.

LECTURE

JUSTICE FABE: Thank you for inviting me to deliver the second keynote address in this distinguished lecture series named for California's extraordinary Chief Justice Ronald George. I am also honored by my colleague Justice Morgan Christen's generous and lovely introduction, and finally, I am so happy to be here with my great friend and your amazing law school Dean, Drucilla Stender Ramey. I had the good fortune to work closely with Dru for the years she served with distinction as the Executive Director of the National Association of Women Judges and, as you know, she is a creative, dynamic and inspiring leader.

Today, I would like to address the impact that women judges are having on the justice system and the legal profession, and why diversity on the bench is a critical issue.

In the late 1800s, women who had passed the bar exam were having trouble convincing state bar associations even to admit them to practice.⁸ The Wisconsin Supreme Court, writing in 1875, reflected the thinking of the era: "it is public policy . . . not to tempt women . . . by opening to them duties . . . unfit for the female character."⁹ When I started law school in 1973, almost one hundred years later, women made up less than twenty percent of law school classes,¹⁰ and now, just thirty-seven years later, nearly half of law school graduates are women.¹¹

But the judiciary still has some catching up to do. Nationwide, women make up close to twenty-nine percent of federal court benches¹²

⁸ See, e.g., Mary L. Clark, *Why Care About the History of Women in the Legal Profession?*, 27 WOMEN'S RTS. L. REP. 59, 60-62 (2006).

⁹ *In re Goodell*, 39 Wis. 232, 245 (1875) (denying applicant's motion to be admitted to the Wisconsin State Bar on the grounds that she was a woman).

¹⁰ CYNTHIA FUCHS EPSTEIN, *WOMEN IN LAW* 53 (University of Illinois Press, 2d ed. 1993).

¹¹ See, e.g., *A Current Glance at Women in the Law 2009*, A.B.A. COMM'N ON WOMEN IN THE PROFESSION, Nov. 2009, <http://www.americanbar.org/content/dam/aba/migrated/women/reports/CurrentGlanceStatistics2009.authcheckdam.pdf>.

¹² *A Snapshot of Women on the Judiciary as Three Women Poised to Sit on the Supreme*

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and twenty-six percent of state court benches.¹³ And I am sad to report that Alaska is one of thirteen states where less than twenty percent of state judges are women.¹⁴

So, you may ask, why does it make a difference to have diversity on the bench? I would like to explore that question a bit today and to talk about how women judges, particularly women chief justices, are making a difference – and why it should matter to us all.

But let me digress a moment by sharing a great event I experienced last March when I attended a reception in Washington D.C. given by the National Association of Women Judges in honor of the two women then serving on the United States Supreme Court: Justice Ruth Bader Ginsburg and Justice Sonia Sotomayor. The two justices had a wonderful conversation with Professor Judith Resnik of Yale Law School, and their colleague from Great Britain, Lady Brenda Marjorie Hale, who was the first woman Law Lord and is now the first and only woman on the United Kingdom's Supreme Court.

When asked to give advice to young women lawyers about the best fields to enter and career paths to pursue, Justice Ginsburg responded: "Your question implies a choice . . . There were so many closed doors, and now they are all open."¹⁵

Justice Ginsburg attended Harvard Law and received her degree at the top of her class at Columbia Law School, the first woman ever to be on both the Harvard and Columbia law reviews. But she told the audience that "not a single law firm in the city of New York" would hire her, because she was a mother with a small child. She recalled that Justice Sandra Day O'Connor's career after graduating third in her class from Stanford Law School began with an unpaid job at a county attorney's office.¹⁶ But, Justice Ginsburg mused, this might have been a blessing. Because if the corporate world had been open to them, she and Justice O'Connor might have retired as partners of major law firms. And

Court of the United States, ALLIANCE FOR JUSTICE, <http://www.afj.org/check-the-facts/women-in-the-judiciary-2010.pdf>.

¹³ 2010 Representation of United States State Court Women Judges, NATIONAL ASSOCIATION OF WOMEN JUDGES, http://www.nawj.org/us_state_court_statistics_2010.asp (last updated May 2, 2010).

¹⁴ *Id.*

¹⁵ Ginsburg Speaks About Judicial Elections and Opportunity; Joined by Sotomayor at Women Judges' Meeting, JD JOURNAL, (Mar. 12, 2010), <http://www.jdjournal.com/2010/03/12/ginsburg-speaks-about-judicial-elections-and-opportunity-joined-by-sotomayor-at-women-judge%E2%80%99s-meeting/>.

¹⁶ Justice Sandra Day O'Connor, THE OYEZ PROJECT, http://oyez.org/justices/sandra_day_oconnor (last visited Nov. 7, 2010).

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“look where we ended up,” she said.¹⁷

Now, I am pleased to report that C-SPAN covered this historic conversation¹⁸ and the Washington Post’s story¹⁹ the next day was in the front news section of the paper, with a headline about Justice Ginsburg’s thoughtful discussion of the problems with judicial elections and the benefits of a merit selection system, like the one we have in Alaska.

Interestingly, just four years before, when women judges honored Justice O’Connor in a gala event upon her retirement, the Washington Post reported the event not as news, but in the Style section: “In a natty plaid suit with velvet collar, a Paloma Picasso silver pin and a silver scrunchie around her pony tail, Ginsburg concluded somberly;,” wrote the Post, “‘To my sorrow, I am now what [Justice O’Connor] was her first twelve years on the court – the lone woman.’”²⁰

Recording Justice O’Connor’s response, the Washington Post article continued, “O’Connor, wearing a dark blue suit, remembered that when President Reagan offered her the job as the first female justice of the Supreme Court, ‘I had to take a lot of deep breaths to decide. It is special to be the first to do something,’ she said, ‘but you don’t want to be the last.’”²¹

Justice Ginsburg and Justice O’Connor served together on the Supreme Court Bench for over twelve years, yet lawyers still occasionally got confused and would address Justice Ginsburg as Justice O’Connor.²² And Justice O’Connor would crisply state, “I’m Justice O’Connor; she’s Justice Ginsburg.”²³ In fact, this became an inside joke at the National Association of Women Judges, and we gave them matching t-shirts.²⁴ One said, “I’m Ruth, Not Sandra,” and the other,

¹⁷ Robert Barnes, *Ruth Bader Ginsburg Says She Would Forbid State Judicial Elections*, WASH. POST, Mar. 12, 2010, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031105136.html>.

¹⁸ *NAWJ Shines at Gala Reception*, NATIONAL ASSOCIATION OF WOMEN JUDGES, http://www.nawj.org/gala_reception.asp (last updated May 2, 2010).

¹⁹ Robert Barnes, *Ruth Bader Ginsburg Says She Would Forbid State Judicial Elections*, WASH. POST, Mar. 12, 2010, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031105136.html>.

²⁰ Darragh Johnson, *Sandra Day O’Connor, Well Judged: Women’s Group Honors Pioneering High Court Justice*, WASH. POST, Mar. 7, 2006, available at <http://www.washingtonpost.com/wp-dyn/content/article/2006/03/07/AR2006030700008.html>.

²¹ *Id.*

²² *Transcript of Interview of U.S. Supreme Court Associate Justice Ruth Bader Ginsburg, April 10, 2009* (interview by Professor Deborah Jones Merritt & Professor Wendy Webster Williams.), 70 OHIO ST. L.J. 805, 823 (2009).

²³ *Id.*

²⁴ See Lynn Sherr, *Phenomenal Woman: Ruth Bader Ginsburg*, O, THE OPRAH MAGAZINE, May 15, 2001, available at <http://www.oprah.com/spirit/Phenomenal-Woman-Ruth-Bader-Ginsburg>.

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“I’m Sandra, Not Ruth.”²⁵ Justice Ginsburg recalled this story at last March’s event, noting, “I don’t think anyone has called me ‘Justice Sotomayor.’”²⁶ Perhaps this is a sign of progress. In recent remarks on Justice Elena Kagan’s joining the Court, Justice Ginsburg observed that, “[i]t’s great for this institution and for the country that women are now one-third of the highest court in the land. It means that we are really here. We are no longer one- or two-at-a-time curiosities.”²⁷

I have to add, as a personal note, how wonderful it is to have another woman on the Alaskan Supreme Court after over thirteen years by myself. You were introduced to Justice Morgan Christen, a Golden Gate Law alumna, earlier tonight, and I could not ask for a more wonderful colleague.

So I suppose this entire discussion leads to one question: does diversity on the bench matter?

As one author recently remarked in an article in *The Judges Journal*: “Simply put, the legitimacy of the judiciary in the minds of the public is at stake.”²⁸ In a democratic society, when the public can see that the diversity of the citizenry is reflected on the bench, the public’s trust and confidence in the justice system are strengthened and enhanced. In a diverse society the bench should speak equality to all who stand before it.

Equally important is having a variety of perspectives and life experiences on the bench. As Justice Ginsburg recently observed, “a system of justice is the richer for the diversity of background and experience of its participants.”²⁹ And as Chief Justice Christine Durham of Utah has noted, women judges “bring an individual and collective perspective to [their] work that cannot be achieved in a system which reflects the experience of only a part of the people whose lives it affects.”³⁰

²⁵ Rebecca Traister, *Hell Hath No Fury like Ruth Bader Ginsburg*, SALON (Feb. 6, 2009 6:40 AM) http://www.salon.com/news/opinion/feature/2009/02/06/ruth_bader_ginsburg/.

²⁶ Robert Barnes, *Ruth Bader Ginsburg Says She Would Forbid State Judicial Elections*, WASH. POST, Mar. 12, 2010, at A1, available at <http://www.washingtonpost.com/wp-dyn/content/article/2010/03/11/AR2010031105136.html>.

²⁷ Stephanie Francis Ward, *Family Ties: The Private and Public Lives of Ruth Bader Ginsburg*, A.B.A. J., Oct. 1, 2010, at 43, available at http://www.abajournal.com/magazine/article/family_ties1/.

²⁸ Ciara Torres-Spelliscy, *A Bench That Looks like America: Diversity Among Appointed State Court Judges*, 48 No. 3 JUDGES’ J. 12, 13 (2009).

²⁹ See Cynthia Loo, *Voices of America: Enhancing Diversity on the Bench*, LA PROGRESSIVE (Apr. 26, 2010) <http://www.laprogressive.com/law-and-the-justice-system/voices-america-enhancing-diversity-bench-2/>.

³⁰ Elaine Martin, *Men and Women on the Bench: Vive la Difference?*, 73 JUDICATURE 204, 204 (Dec. 1989- Jan. 1990) (quoting Durham, “President’s Column,” NAWJ NEWS AND

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So I suppose the natural follow-up question is, “Are women judges actually making a difference?”

My first answer is that all judges bring their life experiences to the bench. My experience as a woman and as a wife and mother obviously affects me just as the life experience of any judge does. And I bring that experience to the bench: it is one lens through which I see and view cases. As Alaskan Judge Elaine Andrews, another Golden Gate Law alumna and the first woman presiding trial judge of Alaska’s largest judicial district, observed when she spoke at my installation ceremony to the Alaska Supreme Court in 1996, “Certainly the Alaska Supreme Court has been progressive in many areas. It’s not as if this appointment illuminates some dark corner. It is just that now we will have something closer to full spectrum light.”³¹

So does that fuller spectrum make a difference in judicial decisions? Interestingly, the jury is still out on that point.

President Carter appointed many women to the federal bench during the late 1970s.³² Early research on the results of judicial decision making by his appointees shows that there were no gender-based differences of significance in the results that judges reached in their decisions.³³ And there were no gender-based differences on any measure of judicial quality; for example, women judges had similar appeal and reversal rates as their male counterparts.³⁴ And one could posit some reasons for this outcome. Perhaps there is a common socialization process in a legal education that tends to mute gender differences. Another likely reason is that legal research and analysis are the same, regardless of gender. And as Justice Sandra Day O’Connor has remarked, a wise female judge will come to the same conclusion as a wise male judge.³⁵

ANNOUNCEMENTS Vol. 8, No. 1, 1987, at 1).

³¹ See Transcript of Remarks at Installation of Dana Fabe as a Justice of the Alaska Supreme Court, Mar. 22, 1996.

³² Lynn Hecht Schafran, *Not from Central Casting: The Amazing Rise of Women in the American Judiciary*, 36 U. TOL. L. REV. 953, 956-57 (2005).

³³ See, e.g., Thomas G. Walker & Deborah J. Barrow, *The Diversification of the Federal Bench: Policy and Process Ramifications*, 47 J. POL. 596, 601-13 (1985); see also Christina L. Boyd, Lee Epstein, & Andrew D. Martin, *Web Appendix to Untangling the Causal Effects of Sex on Judging* (2006), <http://epstein.law.northwestern.edu/research/genderjudgingapp.pdf>.

³⁴ *Id.*; see also Rosalind Dixon, *Female Justices, Feminism, and the Politics of Judicial Appointment: A Re-Examination*, 21 YALE J.L. & FEMINISM 297, 311-28 (2010).

³⁵ See Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Court*, 114 YALE L.J. 1759, n.1 (2005) (attributing the original quote—“A wise old man and a wise old woman reach the same conclusion”—to Minnesota Supreme Court Justice M. Jeanne Coyne, and stating that Justices O’Connor and Ginsburg have both used the quote).

But recently, the Supreme Court heard the case of Savana Redding, a thirteen-year-old girl who had been strip-searched at school by the authorities on suspicion of hiding prescription-strength ibuprofen pills.³⁶

“They have never been a 13-year-old girl,” Justice Ginsburg said of her eight male colleagues, some of whom questioned how traumatic such a search could really be.³⁷ “It’s a very sensitive age for a girl,” Justice Ginsburg went on to remark in an interview in USA Today:³⁸ “I didn’t think that my colleagues, some of them, quite understood.”³⁹

Chief Judge Judith Kaye, who was the chief judge of New York State’s highest court for sixteen years, said after retiring that she has come to believe that women judges will, at times, see things differently: “To defend the idea that women come out different on some cases, I just feel it. . . . I feel it to the depths of my soul,” because a woman’s experiences are “just different.”⁴⁰

The flip side of the argument is that as judges, we are trained to work hard to recognize the views – and even the biases – that come from our life experiences and to set them aside as we decide cases based on the facts before us and the laws of our jurisdictions. Both men and women jurists face and address this challenge on a daily basis.

Recent academic studies on this topic have produced conflicting results. A study by Jennifer Peresie at Yale Law School provides evidence that three-judge federal appellate panels with at least one woman on them were twice as likely to decide in favor of plaintiffs who alleged sexual harassment or sex discrimination in the workplace as all-male panels.⁴¹ Yet another study found that there were absolutely no gender-based differences in the appellate decisions in other cases involving such issues as disability law, environmental law, or capital punishment.⁴² And in studies of federal trial court cases, researchers have *not* found evidence that a judge’s gender affects decisions even in

³⁶ *Safford Unified Sch. Dist. v. Redding*, 129 S. Ct. 2633 (2009) (holding that a school principal’s reasonable suspicion that a student had prescription-strength ibuprofen did not justify a strip search of the student, but that the officials involved had qualified immunity).

³⁷ Joan Biskupic, *Ginsburg: Court Needs Another Woman*, USA TODAY (Oct. 5, 2009, 11:16 AM), http://www.usatoday.com/news/washington/judicial/2009-05-05-ruthginsburg_N.htm.

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ Neil A. Lewis, *Debate on Whether Female Judges Decide Differently Arises Anew*, N.Y. TIMES, June 3, 2009, at A16, available at <http://www.nytimes.com/2009/06/04/us/politics/04women.html>.

⁴¹ Jennifer L. Peresie, *Female Judges Matter: Gender and Collegial Decisionmaking in the Federal Appellate Courts*, 114 YALE L.J. 1759, 1768 (2005).

⁴² See Christina L. Boyd, Lee Epstein, & Andrew D. Martin, *Untangling the Causal Effects of Sex on Judging*, 54 AM. J. POL. SCI. 2, 389-411 (2010).

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civil rights or sex discrimination cases.⁴³

So I am not sure that there are any definitive answers to the question of whether women judges decide cases differently.

But women are certainly having an impact on their courts in areas other than the outcome of substantive decisions, and today I will focus in particular on women who were the Chief Justices of their states.

While I served my second three-year term as Chief Justice, there were eighteen women Chiefs of the highest courts and United States territories. I think that there are twenty or twenty-one today.⁴⁴ Some of these women chiefs were appointed, some were elected by the public, some rotated in by seniority on their courts, and some were elected chief by their colleagues on the court, as we do in Alaska. But in my view, they are all making a tremendous difference in their courts.

Let me give you an example. I mentioned Chief Judge Judith Kaye of New York a moment ago. She and Chief Justice Kathleen Blatz of Minnesota were pioneers in the area of protecting abused and neglected children. In some courts, cases involving children were viewed as low-status work – not the desirable caseload for the best and brightest judges. But Chief Judge Kaye and Chief Justice Blatz *are* among the best and brightest. And they made it their cause to bring to light the need to handle these cases differently, efficiently and effectively in the courts, so that the children did not spend their childhoods in foster care and lose the chance for adoption and a permanent home.

Chief Judge Kaye and Chief Justice Blatz convened two summits of chief justices, trial court judges, state court administrators, child protection workers and policy makers from every state. The first of these summits was held in Chief Justice Blatz's hometown of Minneapolis; a second convened in Chief Judge Kaye's home in New York City.⁴⁵ Those of us who attended heard about the best practices for avoiding repeated continuances and delays in these incredibly important and sensitive cases.⁴⁶ And each state's team met to plan new approaches to ensure that children have safe and permanent homes while they are still children – either through reunification with their biological parents who have successfully completed treatment and case plans, or through

⁴³ E.g., Orley Ashenfelter et al., *Politics and the Judiciary: The Influence of Judicial Background on Case Outcomes*, 24 J. LEGAL STUD. 257, 265-80 (1995).

⁴⁴ See *Women Who Are Chief Justices on a State Supreme Court*, 50-50 BY 2020®: EQUAL REPRESENTATION IN GOVERNMENT, <http://www.ergd.org/Justices.htm> (last updated May 8, 2010).

⁴⁵ See Press Release, Leaders of New York Court and Child Welfare Agencies to Participate in Collaborative National Meeting to Reform Foster Care System (Sept. 19, 2005), available at http://www.nycourts.gov/press/pr2005_05.shtml.

⁴⁶ *Id.*

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adoption by families with whom they could embark on new lives.

At the summits, these two women chiefs made sure that participants heard the voices of successful young adults who had grown up in the foster care system and who could speak about the struggle and pain of their journeys to responsible adulthood. These two women chiefs urged all of the state chief justices to foster collaboration among courts, agencies, attorneys and child advocates to improve the justice system for their states' most vulnerable children so that all might enjoy the promise of success.

Women chiefs are also making a difference in recognizing the importance of work-life balance. This is an issue that I feel quite strongly about. A Ninth Circuit study on gender-bias in the courts found that those who take the opportunity to invest time in families and parenting are likely to find that such behavior impairs career advancement.⁴⁷

Yet attention and devotion to family are not only important in making us more well-rounded people and thus better professionals, they also are essential to reinforcing the fabric of our society and communities – raising children who have good values and can give back to their communities.

I am proud that Alaska's court system has worked hard to create a workplace that honors the principle of work-life balance, and this is an issue that I have worked on as Chief Justice. As far back as 1981, when I was the Chief Public Defender for Alaska, supervising twelve branch offices throughout the state, I experimented with a number of then-novel flexible scheduling ideas: I instituted flextime at the employees' request, starting at seven o'clock in the morning so that they were out of work by three-thirty when children were home from school; I created job shares with two attorneys sharing one job, and job rotations with three attorneys sharing two jobs, working eight months on with four months off. These flexible plans were available to both men and women because balance may involve a father taking his family on sabbatical or a mother spending her summer with her children when they are out of school. We had flexible and generous leave for new fathers and mothers before the existence of the Family and Medical Leave Act.⁴⁸ We even had two Iditarod mushers, who were supervisors of the Kotzebue Public Defender

⁴⁷ See Hon. Dorothy W. Nelson, *Introduction to the Effects of Gender in the Federal Courts: The Final Report of the Ninth Circuit Gender Bias Task Force*, 67 S. CAL. L. REV. 731, 732 (1994).

⁴⁸ The Family and Medical Leave Act, passed in 1993, requires employers to provide secure, unpaid leave for serious health conditions. See *Family and Medical Leave Act*, UNITED STATES DEPARTMENT OF LABOR, <http://www.dol.gov/whd/fmla/index.htm> (last visited Mar. 30, 2011).

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office in Northwest Alaska.⁴⁹ Each would work six months on duty in the summer at the office and six months off in the winter to train their dogs. And if you think that there is not a benefit to this as a supervisor, you are wrong. When one of the public defender musher's top lead dogs had puppies, the musher named one of them Dana. She never really was a good racing dog, which makes me the right namesake I'm afraid, but she was sweet, though not too athletic.

In my experience, this flexibility in the workplace led to happy, productive attorneys and staff with greater longevity and continuity in an office that usually saw high turnover due to the crushing caseload. Attorneys who were able to spend time with their children out of the office were more efficient and effective when they were in the office. Justice Ginsburg recently touched on this topic in an interview with the ABA Journal, attributing to her daughter one reason why she was such a good law student: "I went home, played with Jane, had dinner and then I was ready to go back to the books. It was the pause that refreshes."⁵⁰

And as judges, we can be sensitive to the needs of clerical staff and law clerks so that they have time off to go to school functions, work in the classroom, or chaperone class field trips. We can ask jurors if they have daycare problems if deliberations go into the evening. We can ask lawyers if continuing a settlement conference into the late hours will cause a problem. During my second term as Chief Justice, our court instituted flexible scheduling for many clerical employees and even administrative attorneys so they can work longer days for nine days and have the tenth day off. This costs the state no extra money and has allowed us to recruit and retain excellent staff, despite salaries that are lower than in the private sector, because they have been able to achieve more balance in their lives.

So I conclude that women on the bench *are* making a difference. Many years ago, I attended the annual meeting of the National Association of Women Judges in Chicago, where President Mary Robinson of Ireland gave her first speech in her first official tour of the United States to the women judges assembled in Chicago. Her words made quite an impact on me. She said: "There are people within and outside of minorities who perceive the law, not as a source of protection, but as a terrifying ordeal. We can persuade them to look again. We do

⁴⁹ The Iditarod is a dogsled race of over 1,150 miles from Anchorage to the Bering Coast. See THE OFFICIAL SITE OF THE IDITAROD, <http://www.iditarod.com/> (last visited Feb. 5, 2010).

⁵⁰ Stephanie Francis Ward, *Family Ties: The Private and Public Lives of Ruth Bader Ginsburg*, A.B.A. J., Oct. 1, 2010, at 39, available at http://www.abajournal.com/magazine/article/family_ties1/.

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not feminize the law. We humanize it.”⁵¹

To the extent that we as women judges, justices, and chief justices are able to help humanize the law, we should be as proud of that accomplishment as any other.

I am so grateful and honored that you asked me to speak to you today. It has been a great pleasure.

PANEL INTRODUCTION

DEAN RAMEY: Thank you so much, Dana. The only thing that was really bad about taking the job as Dean was losing some of my contact with the National Association of Women Judges and with Dana, who was going to be coming in as President shortly after I left. So, you can see why I miss it.

I now get to introduce the Senior Presiding Justice of the California Court of Appeal. A great inspiration and mentor to me and legions of other women in the law, in the judiciary and in life itself. She was co-founder and first President of California Women Lawyers (she was the provisional President, I was the provisional Vice President, and we put the organization together during a slumber party at Joan's house twenty-six years ago in Sherman Oaks). She was the co-founder (with her beloved friend, Justice Vaino Spencer) and first President of the National Association of Women Judges (as you've heard), and is one of the three-member Commission on Judicial Appointments, which just confirmed the nomination of California's new Chief Justice-to-be.

Justice Joan Dempsey Klein stands as an icon to every woman, lawyer and judge in this room, and to all of the very good men as well. As a descendent of California's famous Bernal family and a fifth-generation Californian with a B.A. from San Diego State and an L.L.B. from U.C.L.A. Law School, Justice Klein served as a state deputy Attorney General for seven years prior to her appointment to the Los Angeles Municipal Court where, of course, she served as presiding Judge. She was subsequently elected to the Los Angeles County Superior Court and in 1978, appointed Presiding Justice of the California Court of Appeal, Second Appellate District, Division Three. Today she is the Senior Presiding Justice of the entire California Court of Appeal.

When she is not out founding seminal organizations, or representing our judicial system here or abroad, or mentoring whole generations of

⁵¹ See Maureen O'Donnell, *Irish President Honored Here // Women Judges Give Her Medal of Honor*, CHI. SUN-TIMES, Oct. 14, 1991; see also Lynn Hecht Schafran, *Not from Central Casting: The Amazing Rise of Women in the American Judiciary*, 36 U. TOL. L. REV. 953 (2005).

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women like me whose lives have been forever changed by her kindness and wisdom, or testifying before the Senate on the nomination of the first woman ever to sit on the United States Supreme Court, Justice Klein is at the receiving end of a never-ending stream of the highest awards our profession and society have to offer its true heroes. From the ABA's Margaret Brent Women Lawyers of Achievement Award to the L.A. Times' Woman of the Year Award to the California Lawyer's own Joan Dempsey Klein Award for excellence as a justice and jurist and long-serving vigorous service and inspiration to women lawyers. Ladies and gentlemen, I give you our moderator, Senior Presiding Justice of the California Court of Appeal, my great and good friend, Joan Dempsey Klein.

PANEL DISCUSSION

JUSTICE KLEIN: Thank you very much, Dru. You may wonder, given what you have heard thus far, why we are having a session here among you and us, focusing on an issue that has allegedly been resolved already. You would think, ah – no need to keep going over those same issues. But allow me to suggest that that is not the case. This year of politicking, if you listen to what is going on by way of commercials – the denigrating of somebody who wants to be recognized by a title that she fought very hard to get, and some of the talk shows, some of their exponents, the kinds of things that they say, and even today some of the slights that all of us who are up here experience – it is still a long way to go before we have a full and free and solid commitment to the integrating of women as leaders in any segment of our society, including the judiciary.

So, I am delighted to participate with Dru in this event, as we all are here, and you will have an opportunity to hear these extraordinary women tell you a little bit about personal experiences. I am not going to spend time introducing them; you all have these little booklets that tell you about them, so I am going to ask a question and see what comes forth from the person to whom the question is addressed, and to see what feedback that gets from some of the other Justices.

I will start with Chief Justice Christine Durham, who has been chair of every committee in the United States of America and the ABA having to do with the advancement of the cause of justice and for women, believe me.

I will ask her this question: do you feel that the controversy over Justice Sotomayor's "wise Latina" statement and the more recent controversy over statements by Ninth Circuit nominee Goodwin Liu, and

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others, stressing the importance of diversity on the bench have had or will have a chilling effect on the willingness of those seeking to enter or progress in the judiciary to discuss the importance of judicial diversity?

CHIEF JUSTICE DURHAM: My answer to that question is twofold – I think it may. I think it may have a chilling effect on people who are ambitious, who have judicial ambitions, to speak openly about the need for diversity on the bench. The second part of my response, however, is that that would be an untoward and inappropriate result, and I hope it does not come to pass. As Justice Fabe’s remarks point out, the notion of diversity on the bench resonates with the American public. It has to do with the core legitimacy of the third branch of government, and it has to do with the public trust and confidence in the ability of the third branch of government to do its work. I think it is very clear, at least I hope it is very clear – I think it is very clear to anybody who *thinks* about this very hard – that we are not in fact a post-racial, post-gender society.

JUSTICE KLEIN: That is true.

CHIEF JUSTICE DURHAM: We are talking today about the bench, but many of you are here from the private sector of lawyers, particularly in firm practice. When you look just at the numbers in the legal profession, one of the most discouraging statistics that I have seen in the last five-plus years is the work coming out of the American Bar Association’s Commission on Women in the Profession. These statistics demonstrate that the numbers are going down for women in positions of authority and power, in at least the elite private sector of the profession. It was approaching twenty percent ten years ago; now it’s down to fewer than eighteen percent, and in many states, including mine, it is worse. So, yes, we are twenty-six percent of the state benches, we are thirty percent of leadership in the state benches, close to thirty percent on the federal bench, but that does not mean that even within our own profession we have accomplished a circumstance that permits us to stop thinking about these issues. There is a great deal of emerging research in the area of implicit attitudinal bias which demonstrates “beyond peradventure” (as we judges like to say) that implicit attitudes still govern the choices and the kinds of conversations that we human beings have about gender and about race. And it is important that we continue the conversation publicly to surface those implicit attitudes and therefore to deal with the risks that otherwise they will create to fairness on the bench.

Thirty years ago, the National Association of Women Judges –

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about which you have heard a lot, as a number of us are in town in part for this event and in part for their meetings – started asking questions about gender fairness in the courts. Ten to fifteen years ago, the Conference of Chief Justices and other judicial organizations had been transformed by the presence of judges and lawyers who, out of their own life experiences and their perceptions of the world, began to ask questions about our justice system that had not been asked before. Dana gave us a wonderful example in the focus on the lives of children in foster care and the roles that the state courts played in those lives. It is no coincidence in my mind that women chiefs first started asking those questions.

I am a member of the American Law Institute and of its council, and I remember when Judge Judith Kaye gave a keynote address at the annual meeting of the American Law Institute. She talked about families and she talked about children. I realized that in all of my many years at the American Law Institute, that was the first time I had heard, in those halls, a discussion of family and children. So, having people who come from different backgrounds causes the conversation to change.

JUSTICE KLEIN: And being the mother of what, five or six kids?

CHIEF JUSTICE DURHAM: I raised five children and lived to tell the tale. And yes, that's part of my experience. It seems to me that anyone who purports to be a defender of fair and impartial justice must defend the role that diversity plays in that process. Having people who are different and who have different life experiences changes the conversations. Think about the conversations that you have in your capacities as decision makers. It is no different for judges. It changes the conversation when the people around the table come from different places and different experiences in their lives.

JUSTICE KLEIN: Do any of you have any comment, either pro or con, on what the good Chief Justice Durham has indicated?

JUSTICE HOLDER: [Justice] Joan [Klein], I will add to that what I have seen since I have been on the Supreme Court of Tennessee. I was the third woman to serve on the Tennessee Supreme Court, but we served *seriatim*. In 2005, we added another Supreme Court Justice who was female, and in 2008, yet another woman was selected as a Justice on the Supreme Court. For nine years, I have seen the court when it was all male except for me. I have seen the court when the fourth woman was added, and now I have seen the court when the fifth woman was added.

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It is not that our decisions are diametrically opposed to those of the prior courts. It is that our discussions are different, and what happens is that we consider things differently. We may reach the same result as the old court would have, but we take on a whole different range of discussion, and that is because our experiences are different. So I agree completely with Chief Justice Durham.

JUSTICE SEARS: I would have to agree with that, and I can give a little different perspective. When I first went on the court of the Supreme Court of Georgia, I was only thirty-six. I think most of you were quite young as well, but the average age of the rest of the members of the court was sixty. They were in their sixties, and mostly white men, and so not only did I bring an interesting element of gender (I was the only woman at the time), and of course race (it's obvious here that I'm an African American woman in the deep south), but also being so much younger, and having a different perspective on life was maybe one of the most interesting pieces of the diversity puzzle that I brought to the court. So it is not just racial and gender diversity but, on a court like that, it is needing to have as many different perspectives as possible to change the conversation.

JUSTICE KLEIN: Well let me ask you to elaborate on that by asking you, having been a first in so many categories throughout your career, to tell us more about how you have been able to steer through your challenges without anyone's footprints to follow and without the company of those like you, all while enduring the pressure of paving the way for black women to come after you. I remember when the National Association of Women Judges learned about you. We thought, "wow."

JUSTICE SEARS: No, you called me up –

JUSTICE KLEIN: I did indeed.

JUSTICE SEARS: – and you said "wow," and I said "wow" back.

JUSTICE KLEIN: I think it was your birthday or something.

JUSTICE SEARS: Yeah.

JUSTICE KLEIN: I sent you a bouquet of flowers through a mutual friend who came and delivered them to you.

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JUSTICE SEARS: Yes, yes.

JUSTICE KLEIN: You were very special to that group of women judges who got together and kind of bared our soul.

JUSTICE SEARS: I appreciate that, and that is part of the way I was able to survive. Obviously, there was nobody like me before me, so I had to make my way. What I found was a tremendous amount of support from women like you all who found me and called me and offered their support. Of course my court was in the middle of Atlanta, Georgia, so I had a tremendous amount of support from the civil rights community, even, who were quite shocked that Governor Zell Miller – I was the second African American put on the court. There were three at one point.

JUSTICE KLEIN: Well that was part of why we put together the National Association of Women Judges.

JUSTICE SEARS: Right.

JUSTICE KLEIN: So we could get together and feel good about what it is we were doing and share these war stories.

JUSTICE SEARS: Yes. My time on the bench, at least until the second woman came on the bench, I'll just be honest, was quite stressful. I came on the court in February and I had to run a statewide contested election in the state of Georgia that year. There had never been a woman who ever won a contested race in Georgia. So it was not just becoming a judge, but it was having to win, as a black woman, a statewide contested race. My opponent sort of outed me. The way to win as an African American female was to kind of go low, but my opponent put pictures on his signs, I guess showing me in my fullness of person or something. This did not fly well but I was able to win.

Another way I survived was by adopting mentors, who would not have me at first but I just stuck on and I did not care what color they were, what gender they were. I had some wonderful men, older men, who liked me and brought me along. What I learned to do in time, particularly as I got a little older, is listen more: listen to my colleagues, listen to what they were saying, listen to what they needed. After about ten years, and it took awhile, I found myself supported by them. I felt part of the club and it was a good feeling in the end.

One other thing I did, since there were no other black females

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around, at least doing the job that I was doing, I really embraced my black female organizations: my sorority, the Links. We met every Saturday morning. It was really, really comforting to find myself amongst those women. Even though they were not leaders in the legal field, they were leaders in education, leaders in other areas, and much older. So, that is how I survived.

JUSTICE KLEIN: Good, good. Anybody have a comment on that?

JUSTICE FABE: I will just agree with [Justice] Leah [Sears] that it makes a huge difference to have a second woman come on the court. Each of my male colleagues, who were quite a bit older than I was, was lovely to me when I came on, but we communicate with each other in writing most of the time, and at our conferences the setup is pretty formal and there is a formal structure. The first day that Morgan Christen came (her chambers are catty-corner to mine), she popped into my office and said, "Want to go get a latte?" and I thought, "*Want to go get a latte!*?" Yes!"

JUSTICE SEARS: When the first woman, the next woman, came I remember going into the bathroom to be alone and take a deep breath. It was such a relief, just . . . no, a relief, you know, not . . .

JUSTICE KLEIN: Have you got your little sign on?

JUSTICE SEARS: Ok, no, no, no. You know, to have somebody who understood so many of the things that are so important to me that I could not talk about, that were just sort of walled off. Somebody who understood like I did, some things. It was great joy for me.

JUSTICE KLEIN: Our last speaker here, our keynote speaker, talked about how you break down inquiries, areas wherein there might be differences of opinion, a similarity of thought processes and opinions. Believe me: women on the bench make a difference. We just think about all the experiences that we have had and we may not discuss them all with our colleagues with whom we are deciding a case, but our approach is a little different, and we probably have a place beyond which we will not go. So, we are going to have to get together with our male colleagues and say, "Hey, ok. I can go here, here, and here. But I cannot go beyond this place right here. My entire background tells me that that is not a place where I as a female justice can go." I don't know whether any of the rest of you have had that experience, but somewhere there is

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line drawing based on what I have been through in my life.

Now we are going to hear from Tennessee Justice Janice Holder who was Chief Justice until this past September. I have a question for you: Did you encounter any expectations for your performance as Chief Justice of the Tennessee Supreme Court that were based on the fact that you are a woman, and how did those expectations shape your time as a chief justice? You know, did they or didn't they and what did you do about that?

JUSTICE HOLDER: I did not expect that there were any expectations because I had watched my male colleagues rotate in and out of that position and nobody expected anything of them. I thought I would roll in, be under the radar, and nobody would notice. That was very naïve of me. I assumed I would find a few initiatives that I thought were important, and I would accomplish something in what I knew was simply a two-year term, a very short period of time to be a chief justice. So that was my intent.

I actually was not even going to have a ceremony when I took the oath of office, but I had one because my mother was then eighty-eight years old and I thought that she would like to see me be Chief Justice. Well, the whole thing blew up in the newspaper, and everybody went crazy. Suddenly I was no longer under the radar. I had been on the court for twelve years, pretty much under the radar, and suddenly everything went wild. Apparently this was going to be an event of which everybody was going to take notice. I then realized that there were expectations, and I was not quite certain how I was going to fill them.

As I said earlier, a third woman came on the court a month later and suddenly the men were a minority. We had a very close relationship because all of us, except for the newest person, had known each other for twenty years. We had prior judicial experience together. What I endeavored to do at that point was to forge a five-person alliance to accomplish some important things in Tennessee. One of those things was to increase access to justice by way of the Access to Justice Commission. We were also faced almost immediately with an attack on our judicial selection system, and I had to plan and lead a response because we really did not see it coming. So, while I started out thinking there were no expectations, I realized very quickly that there were some. That is essentially what shaped the two years that I had as Chief Justice.

One of my friends in a law firm in Memphis emailed me one day. He said, "Janice, you are getting more publicity than Paris Hilton." In a way, it was true. Every time the court did something, I was the spokesperson with my colleagues completely backing me, and we

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worked hard together and we accomplished a lot. Starting out with no expectations, I ended up with people having very high expectations of me, and that is what allowed me to accomplish the things that I was able to accomplish in two short years.

JUSTICE KLEIN: I recall our conversation, among us, before we came out here. We were just discussing, as we always do when judges get together, some of the old war stories.

I recall when I was first appointed to the bench, male lawyers would come in and they would refer to me by a lot of things, but they could never get around to say, “Your Honor.” “*Your Honor*”: that did not come out of their mouths. I got called some different things along the way and I finally had to ask one of the lawyers to come up and I said, “you may not respect me, but you must respect the role that I serve and therefore you will refer to me as ‘Your Honor’ or you will be held in contempt.”

Our next speaker related to us that they called her something too. She is the Washington Chief Justice. Her name is Barbara Madsen. They called her Barbara! I am curious whether any of your experiences had anything to do with the manner in which you prepared yourself for the role of Chief.

CHIEF JUSTICE MADSEN: To address your first question about life experiences, I think that every experience you go through is part of what makes you who you are and helps determine the road you take. I learned an important lesson early in my career as a judge when litigants felt comfortable coming up and resting their arms on my judicial bench and saying, “well, Barbara, lemme just tell ya what really happened here.” I learned that I did not get that instant respect that traditionally comes just by putting on the black robe. I could never get used to “Ma’am” either. I got a lot of “Ma’am.”

JUSTICE KLEIN: Oh yeah, that was it – “Ma’am.”

CHIEF JUSTICE MADSEN: I thought, “there is something wrong with this.” My name plate said “Hon.,” H-O-N, meaning “Honorable.” But, instead of “your Honor” I got “Ma’am.” I think those early experiences helped prepare me for the reality that as a woman I could not expect the instant credibility that comes with the title of “Chief” when I finally became Chief Justice. The Chief who preceded me was the most senior judge in the state of Washington—he was a man. It did not matter what he did, or what he did not do, or where he went, or what he said—he had

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credibility. He had credibility because of his stature in the bar, because he had been a judge for so long, but also because he was a man—pure and simple.

What I also learned along the way was that I had to establish credibility in different ways than my predecessor. Based on a variety of experiences over the years, I found the best way to build credibility was to build coalitions. Throughout my career, I have tried to build coalitions among those people who historically did not have a voice at the table, either because of race or gender or ethnicity or some other characteristic. So I built coalitions throughout my career as a way to gain credibility, to be heard, and a way to get things done.

When I realized that I was going to have a chance to be Chief Justice, I promised myself, that I would not “squander” one minute of being Chief. Even before I was elected Chief, I began to reach out to the communities in which I had always found friendship and support. I reached out to the minority bar associations, for example, and to community leaders who were involved in the issues I cared about. I reached out to other women Chiefs. In fact, at the last annual NAWJ Conference I asked, “Is there, like, a training course for becoming Chief?” And if not, why not? So here we are—Dean Ramey created this first ever panel of women Chief Justices.

Unfortunately, though, there is no training course for women who are becoming Chief, but that is what I really wanted—advice on how to use the “bully pulpit” and how to set agendas to bring about positive change, to launch initiatives to overcome obstacles for people trying to get justice. So I reached out to my colleagues at NAWJ, and to the Washington Women Lawyers, and to the Access to Justice Community, which is very vibrant in Washington State. I had found friends in these organizations, I found the issues that I cared about were being addressed in those organizations. The mission of those organizations embodied the things that I wanted to be involved in as Chief. By reaching out and building coalitions, I was able to build credibility as a leader in the justice community. People now seem to recognize that I am willing and capable of providing leadership. Staff, lawyers, and other judges have noticed, “yes, she is Chief, she has an agenda, she has goals, there are things she wants to accomplish, we agree with the things she wants to accomplish.” My first nine months in office as Chief Justice have been immeasurably easier because I have allies and colleagues who want the same results that I do.

What I care about most is making sure the courts are really serving the people who use them. When I look out on the justice system I see that the people who come to our courts, for the most part, are

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unrepresented litigants—and many, many of them are women and their children. Domestic cases, dissolution, domestic violence, child support—these cases top the numbers in terms of the concerns that bring people to our courts, and most of these people are unrepresented. My agenda as Chief Justice is to ensure that our courts are actually helping the people we serve. And, it turns out most people using our courts are not at the top of their profession. Many are out of work, they are being evicted from their homes, they are victims of domestic violence, they are having problems with employment or benefits. These are the people that I want to be sure are being well served by the courts. Through applying the lessons I learned early in my career about building coalitions, I believe that I will be better able to succeed in reaching my goals as Chief Justice.

JUSTICE KLEIN: Have any of the rest of you had experiences – not being called “Barbara,” but being called “Hon,” H-O-N you know, or something other than “Your Honor?”

JUSTICE HOLDER: I got “Hizzonor.” There was an attorney for whom it was one word. It did not matter whether you were male or female, the words were not “Your Honor” or “Her Honor” or “His Honor.” It was “Hizzonor.” “Hizzonor will tell you such and such.” I have also been addressed, on a panel where I was the only woman, by attorneys who would come up and address the panel as “Gentlemen.”

JUSTICE KLEIN: Oh sure.

JUSTICE HOLDER: I have had a lot of that sort of thing.

CHIEF JUSTICE DURHAM: We all have a long list of stories, but I will not tell mine. Although, they do go back a ways, and some of them are pretty good.

I wanted to follow up on a comment that Chief Justice Madsen made about the state courts. You are looking at a group of leaders and former leaders of state court systems throughout the United States. I think that it says in the program that I am the immediate past President of the National Conference of Chief Justices. So I am just going to take a little bit of liberty here and point out to you, with all due deference to my colleague Mary Schroeder from the Ninth Circuit, that in the last year from which we have full and adequate statistics, there were a total of 385,000 cases filed in all of the federal courts, exclusive of bankruptcy, in the United States. Would you like to guess how many filings for that

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same period of time there were in the state courts? I am talking exclusive of traffic cases. Do you want to take a guess?

In the state courts of the United States: forty-seven million cases. It is our system to which those women, those unemployed persons, those people with personal injuries, those people with property disputes, those people with banking and foreclosure issues come. Access is at the top of all of our lists, and what Chief Justice Madsen says about needing credibility as a leader in a state court system to further access and to shore it up is very important.

What is interesting to me is that I look around at the Conference of Chief Justices and, I'll tell you, the women have been running the place for a little while. When Ron George was inducted as President of the Conference of Chief Justices – I think now, five years ago or so – he commented on how proud he was to be the first non-woman to receive the gavel in a number of years. Again, it is not entirely coincidental. I am not an essentialist, at least not much of one in that I do not believe that women are essentially different from men, but I do think that our life experiences have prepared us to ask different questions and to make different demands on the institutions that we serve. If today's panel is any indication, I think that we have some good empirical data, albeit a small sample for that.

JUSTICE KLEIN: Thank you. There is a recognition that there are not enough federal judges to handle whatever load they have got. Whoever has been the Chief Justice on the United States Supreme Court over the last 'X' number of years that I can remember, that Chief Justice has gone to the Congress and said, "please, give us more judges and raise the pay because it really is way too low for the responsibility they have." Thus far, I have watched years and years and years go by, and nothing has happened in that regard. Now it may well be, with the advent of so many women chief justices, that they will be able to have more influence in this regard. I would ask Justice Fabe: Why do you think there are so many women chief justices around the country right now, and what do you really think is going to be the impact of their numbers?

JUSTICE FABE: Well, you know, I think there *are* a lot of women chiefs right now. I think there are twenty women chiefs of the fifty states. Although there are technically fifty-one chiefs, because Texas has a highest civil court and a highest criminal court, it is twenty out of fifty-one. So almost forty percent, which is kind of amazing.

I thought about that – why so many women chiefs? I think it is because the job requires administrative skill. Administration is basically

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juggling a lot of topics and we are really good jugglers. In order to raise a family and have gotten to the top of your profession, whether as managing partner of your law firm, the way Morgan Christen was, or as head of a public sector agency, a legal services office, or a public defender's office the way some of us were, or as head of a United States Attorney's Office – in order to achieve that, you have to be really good at juggling. So I think that is why we have so many women chiefs.

In terms of the impact, as my remarks earlier indicated, I think that women are shining a beam of light into some topics and areas that really have not seen that light before. Whether in the arena of protecting neglected and abused children, or trying to increase work-life balance, or looking at equality in the justice system and trying to achieve equality and diversity in the system, I think that women are well suited to it. I think they are making a difference.

JUSTICE KLEIN: You have probably heard that Justice Scalia does not believe that the Fourteenth Amendment covers sex discrimination and women and stuff. That was a surprise to me, but that is what he told a group of students at one of the other law schools around here recently.⁵² He said, "The states' legislatures can take care of that." So, better that we have a lot of women judges on the state courts, lest we come confronted with one of these Fourteenth Amendment issues and we find we do not have protection there.

JUSTICE FABE: It is a good thing we have state constitutions to fall back on.

JUSTICE KLEIN: Yes, well, that is what the good Justice Scalia would like to have us rely on. There are so many areas that we have not touched tonight, that we could have touched. I would like to thank Dru, your Dean, for having this idea and setting it up. Believe me, she is a leading light in this area and she will continue to be. Your law school will be very, very proud of her, and we will look to her for continuing input in this area.

I would like to say on behalf of all of us: thank you to all of the participants here today and to you folks who have come to hear it. It has been our pleasure and I hope that you got some of the vibes that we tried to impart to you. Thank you.

⁵² See Julia Cheever, *Justice Scalia: "A Lot of Stupid Stuff Is Perfectly Constitutional,"* BAY CITY NEWS, Sept. 18, 2010, available at <http://sfappeal.com/news/2010/09/justice-scalia-a-lot-of-stupid-stuff-is-perfectly-constitutional.php>.

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DEAN RAMEY: On behalf of Golden Gate University School of Law, I so much want to thank all of you. This is such an extraordinarily distinguished group and we are so very fortunate that you so graciously accepted our invitation. I want to thank you, Dana, for your magnificent speech, and all of you for sharing some of your insights into what it is to be at the very, very top of the legal system of your state, from all over the country.

I did want to mention something on the issue of work-life balance. Most or all of us up here have children. My daughter, Jessica, is here with her boyfriend Tim and my husband Marvin, and is a brand new civil rights lawyer at one of the finest civil rights firms in the country. My mother, the medical school professor, used to say about her own children, and I will now say it about Jessica, "God knows what she could have made of herself if she had not had a working mother."

I want to thank all of you for attending and for being such an attentive audience. You are all invited to come forward and into the reception area. Various people who know what they are doing here, which is not me in this case, will show you where the reception is. Please join us and talk to all of our distinguished guests. Thank you again.